Update - FCA's Business Plan 2020/2021

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Introduction

The publication of the Financial Conduct Authority's (FCA) Business Plan for 2020/21 comes as the UK copes with the global pandemic of COVID-19 and at a time when it was expecting to be well progressed with plans for withdrawal from the EU.

In this somewhat slimmed down edition of its annual plan, the FCA sets out that *"this Business Plan was intended to explain its strategic focus over the next 3 years".* The regulator goes on to explain that they *"...are publishing this version now to outline the things [we] believe will continue to be important even as millions of households and businesses that rely on financial services and markets wrestle with the uncertainties created by coronavirus."*

The FCA also acknowledge, *"Leaving the EU will create a new political, legal and economic environment for firms and regulators"* and that they will *"...have an important role to help manage risks connected with the end of the transition period".*

The main areas of interest for regulated firms and individuals will be the sections of the Plan that address:

- **a.** Coronavirus (COVID-19)
- **b.** The 5 key priorities over the next 1-3 years
- **c.** Cross-cutting work
- **d.** Sector work

Our summary of those areas follows on the subsequent pages.

Some key soundbites to note from the Business Plan are:

- FCA is the conduct regulator for nearly 60,000 UK firms and the prudential regulator for around 49,000 firms.
- In 2019, the percentage of firms FCA refused or that withdrew their application following scrutiny was 7.6%, compared to 5.8% in 2018.
- Supervisory work will include looking both at the conduct of individual firms and, more widely, at how retail and wholesale markets are evolving.
- FCA aims to assess and address the drivers of culture. This includes looking at firms' leadership, purpose, governance and approach to managing and rewarding their employees.
- Over the coming year, FCA will shift its focus towards smaller firms and those consistently failing to meet FCA standards, moving more swiftly to enforcement action against those that fail to do this and so cause harm.
- In the financial year up to and including 31 March 2020, the FCA achieved 217 outcomes using its enforcement powers. The fines amounted to £224,428,900

The FCA summarises its phased objectives over three years, as follows:

Short term

- that markets function well;
- that the most vulnerable are protected;
- that the impact of firm failure is minimised;
- that scams are tackled, and;
- to ensure consumers and small firms are treated fairly.

Medium term

The FCA is aiming to ensure that consumers:

- can rely on safe and accessible payments;
- can make effective investment decisions about their savings, and are not exposed to risky or poor value investment products;
- don't get into unaffordable debt and are treated well if they do, so that credit markets work well for consumers, and;
- are offered fair value products in a digital age.

Long term

- The FCA will focus on transforming its own operations for a digital age, learning from what has gone well and from what has not, and;
- Working with the Government and other stakeholders to shape the future regulatory framework.

In setting out some of the consideration to shape their longer term view, the Business Plan states that the regulator will look at its 'entire system', from its quick response approach to the COVID-19 situation, to intelligence, authorisations, supervision and interventions.

The Plan is also critical of the current approach, saying that there has been too much focus on rules and process and not enough on principles and outcomes, with insufficient resources committed to the prevention of harm, empowering consumers to take good decisions and regulatory action to safeguarding consumers' financial well-being.

Coronavirus (COVID-19)

COVID-19 is taking the world by surprise, causing a great deal of uncertainty for firms, their employees, their customers and wider society. The Business Plan reiterates the FCA's main priorities are to ensure that firms give consumers the support they need, that consumers do not fall for scams, and that firms and markets know what is expected of them.

The FCA has already made a series of interventions at unprecedented speed to protect consumers, firms and the markets. These include:

- A range of temporary measures to support users of consumer credit products, such as personal loans, credit cards and overdrafts, who are in financial difficulty as a result of coronavirus
- Setting out new guidance for mortgage providers on payment holidays for consumers in financial difficulties
- Issuing new guidance on the Government's Coronavirus Business Interruption Loan Scheme, including on how lenders should assess affordability.
- Setting out clear expectations for general insurance providers – including home, travel and motor insurance.
- Providing information on how the Government's rules on key workers should be applied to financial services firms
- Requesting that firms delay announcements of preliminary results to ensure that information for markets is accurate and helpful, and giving firms an additional two months to complete and publish their audited financial statements
- Highlighting to consumers the increased risk of scammers trying to exploit the uncertainty created by the current situation
- Delaying supervisory and regulatory change activity which is not critical to protecting consumers and market integrity in the short-term, allowing firms to focus on supporting their customers during this time

Additionally, the Business Plan recognises the impact to firms from coronavirus and that the duration of this disruption is highly uncertain. This has made it much harder for the FCA to plan too far into the future. While the Business Plan sets out the priority areas over the next 1 to 3 years, the FCA will only take forward those areas where it does not have a detrimental impact on their focus on the coronavirus. The FCA also recognise that it may be many months before they can fully focus on the activities set out in the Business Plan and even then, these may be subject to change. This could mean an update to the Business Plan over the coming months.

"We are working alongside international counterparts in response to the global coronavirus outbreak."

The FCA is also clear that it will remain vigilant to potential misconduct. Senior managers therefore should have the Senior Managers & Certification Regime ("SM&CR") senior manager conduct rules front of mind when reacting to COVID-19. After all, they will be ultimately accountable tomorrow for the decisions that they take today.

Five key priorities over the next 1-3 years

FCA identified four external priorities that it will focus on over the next 1-3 years, with the fifth priority being its own transformation – to become a more efficient and effective regulator in the longer term. It is also acknowledged that coronavirus will significantly affect the shape and scope of FCA actions.

1. **Transforming how FCA works and regulates**

FCA notes its plans in this area as 'ambitious' and that it will need to consider its approach towards prioritising and delivering outcomes, using data and technology, establishing the capabilities needed to be 'fit for the future' and working with global partners. A commitment was outlined to make quicker and more effective decisions by acting as 'one FCA' and broadening its approach to the way in which it chooses regulatory tools, to keep pace with urgency of particular issues.

This transformation will also better prioritise end outcomes for consumers, markets and firms, and is reflected by the focus on just five key priorities and the outcomes that the FCA wishes to achieve against those. The next principal of its transformation is the better use of intelligence and information to identify harm and remove it more quickly when it is seen, by streamlining data regulatory returns through Digital Regulatory Reporting (which is coming online throughout March 2020 and superseded the Gabriel platform for gathering information) and closer regulatory cooperation with other regulators. Lastly, under this priority, FCA speaks about its intention to Influence internationally on issues that affect UK markets and consumers, with a view to increasing public confidence and strengthening the UK's reputation as an international market place, so that it continues to be a good place to do business.

In terms of measuring progress, the FCA notes that numerous indicators will be used, including the range of our regulatory tools and the speed with which they identify harm and use them.

2. Enabling effective consumer investment decisions

The Business Plan notes that the FCA sees significant risk of harm in the pensions and retail investment markets and acknowledges that this is in part a bi-product of consumers being given additional responsibility in recent times for complex decisions. Specific mention was made of the risks in the Defined Benefit market and that FCA wishes to ensure that when it comes to investment products, these are designed to meet consumers' needs, deliver value for money, and are marketed in a fair, clear and not misleading way.

The Plan outlines that that there are two main strands to consumers being able to make effective decisions about their investments; firstly through access to high-quality advice and support and being aware of how to protect themselves from fraud and scams and secondly, through a proposed consumer harm campaign.

The measures of success under this priority will be indicators such as continued suitability assessments of Defined Benefit (DB) and Defined Contribution (DC) transfer advice, as well as developments expected through the RDR and FAMR.

"We want all firms to take the end outcomes for consumers and markets into greater account when they design and deliver services."

3. Ensuring consumer credit markets work well

The next stated priority is in respect to consumers who need to borrow to meet their essential living expenses, noting that these consumers typically pay more for credit, have little chance of repaying their debts and lack the financial resilience to meet unexpected shocks. These issues affect many vulnerable people in the UK, cause severe financial stress and significantly damage health and wellbeing and it is expected that the coronavirus will have a major impact on this market. Accordingly, FCA propose to implement measures allowing firms to exercise greater flexibility where it is in the best interests of consumers, to ensure that:

- Consumers can find products that meet their needs;
- Consumers do not become over-indebted by being given credit they cannot afford;
- Affordable credit is available to smooth consumption, and;
- Consumers can take control of their debt at an early stage when they fall into financial difficulty.

Amongst other indicators, this Business Plan notes that a key measure of progress will be continued assessment of the suitability of creditworthiness assessments to understand whether consumers are being extended credit they cannot reasonably be expected to repay.

4. Making payments safe and accessible

The FCA acknowledges the rapid growth of the payments services sector and that the coronavirus emergency will impact firm's financial strength and consumers' ability to access cash, making this a high- priortity sector. Under this priority, efforts will be jointly focussed with the Payment Systems Regulator (PSR), the Government, and the Bank of England, amongst other regulators.

Three outcome are being sought, which are linked to:

- ensuring that firms handle and store data correctly and minimise the impact of operational outages. This will also include the monitoring of emerging risks and ensuring that firms have appropriate systems and controls to prevent all types of financial crime;
- ensuring that firms safeguard customer funds and deliver high-quality, fair value products and services to consumer, with a focus on safeguarding and other regulatory requirements;
- ensuring that customers continue to have Access to Cash and that market developments do not exclude consumer groups.

Progress will be monitored through the development of data sets and the monitoring of operational incidents and outages, together with financial crime information as gathered through regulatory returns.

5. Delivering fair value in a digital age

Recent investigations of pricing practices in General Insurance, Cash Savings and Mortgages show markets sometimes fail to achieve fair value for consumers, some of whom pay a loyalty penalty. FCA also expect that social changes driven by coronavirus to accelerate the development of digital markets. An aim is ensuring that vulnerable consumers do not become the 'digitally disenfranchised'. FCA want consumers to benefit from digital innovation and competition, while tackling any problems.

To achieve this, FCA are targeting three outcomes:

- Consumers can choose from products that meet their needs, at a suitable quality and price
- Consumers should be able to access, assess and act on available information to make informed buying decisions. They should be confident they are getting appropriate quality and service for the price they pay, and have the information to assess this. Digital innovation and competition supports greater value for consumers
- Vulnerable consumers are not exploited or targeted with poor value products and services and access to key products and services is fair.

The FCA's Data Strategy will form one of the measures of progress over the next 3 years and inform the monitoring of consumers' satisfaction with financial services firms.

Cross-cutting work

The regulators work under this heading will take place across sectors in areas that have a broad market impact, highlighting six applicable areas:

1. **Our EU withdrawal and wider international work**
2. **Climate change**
3. **Innovation and technology**
4. **Operational resilience**
5. **Financial crime**
6. **Culture in financial services**

Looking at each area in turn:

1. FCA confirms that it will provide the Government with technical support as it negotiates the UK's future relationship with the EU, and other jurisdictions to prepare for the end of the transition period; this includes continuing work in respect of the temporary permissions regime for EEA-based firms and funds passporting into the UK.

"We will preserve the UK's role as home to open global financial markets. International engagement on issues of mutual interest will be more important than ever to us achieving our objectives"

2. In relation to climate change, the FCA will continue its policy research to better understand how retail investment products are designed, the accuracy of disclosure, and whether this enables consumers to make effective decisions on 'green products'.

3. Innovation and technology will continue to be areas of investment to make better use of data to regulate efficiently and effectively. We will deepen our engagement with industry and society on artificial intelligence, specifically machine learning, and focus on how to enable safe, appropriate and ethical use of new technologies. This will also include strengthening rules to prevent money laundering, as well as working with domestic and international stakeholders to support a joined-up approach to cryptoassets.

   As referred to above, the FCA wishes to reduce the regulatory reporting burden on firms and will replace the Gabriel system with a new platform for collecting firms' data. Consideration will also be given to expansion of the sandbox and facilitation of international sandbox experiments.

4. In terms of operational resilience, the aim is to set new requirements that strengthen operational resilience. Joint consultation papers were published on this issue and the consultation period has now been extended to 1 October 2020.

Proposals make it clear that we expect firms and Financial Market Infrastructures (FMIs) to take ownership of their operational resilience and to prioritise plans and investments based on their public interest impact. A Policy Statement including final rules will be issued shortly after the consultation closes.

"We expect all firms to have contingency plans to deal with major events and that the plans have been tested. Alongside the Bank [of England], we are actively evaluating the contingency plans of a wide range of firms".

Not surprisingly, Culture remains a priority and a look back on the implementation and operation of the Senior Managers & Certification Regime (SM&CR), is likely to be key to the valuation of culture in financial services and indeed conduct within firms.

5. The prevention of financial crime and making the UK financial markets a hostile place for criminals and a safe place for consumers is once again high on the FCA's agenda.

The Business Plan states that changes will be made this year to how financial crime is reduced.

These include:

- making greater use of data to identify firms or areas that are potentially vulnerable;
- continuing to take enforcement action where serious misconduct is uncovered;
- potentially extending the Financial Crime Data Return to more firms to strengthen risk-based supervision;
- testing how well professional body supervisors in the legal and accountancy sectors have embedded AML strategies
- continuing the registration and supervision regime for cryptoasset activities
- mitigating consumer harm through 4 types of fraud – pensions, investments, online fraud and loan fee fraud, and lastly,
- ensuring that firms meet requirements to have effective systems and controls to detect, disrupt and reduce the risk of financial crime.

6. In terms of Culture in firms, FCA re-affirm that all solo-regulated firms are expected to comply with the requirements of the SM&CR as they fall due. This is supplemented with recent publications to provide guidance to firms in respect of SM&CR responsibility during the coronavirus crisis. FCA confirms that it will continue to focus on the four key culture drivers in firms – purpose, leadership, approach to rewarding and managing people, and governance – and their effectiveness in reducing the potential harm from firms' business models and strategies.

Sector work

In addition to the overall set of priorities that the FCA has established for the complete financial sector, it has also identified more specific objectives and remedies targeted at the following areas:

- Wholesale financial markets
- Investment management
- Retail Banking
- General Insurance and Protection

Many of the FCA's concerns in these specific sectors reflect their view of the issues that affect the financial markets cross-sector as outlined above. Some of the proposed remedial action, however, is more specifically focused, and this includes objectives that have been designed around ensuring that:

- firms are operationally resilient;
- the incidence of market abuse, fraud and financial crime is minimised;
- consumers get high-quality, fair value products and services;
- markets/sectors remain orderly in a range of conditions – from dealing with the coronavirus to the impact of the end of the EU exit transition period;
- market effectiveness is improved by enhancing governance and accountability through the SM&CR;
- consumers are not unfairly excluded from products and services – particularly those who are deemed vulnerable.

The FCA's plan must be carefully considered by all firms, large or small, as the factors of risk posed to businesses and consumers must be recognised and proposed measures implemented to ensure that all regulated firms operate in accordance with the FCA's guidelines and objectives.

The regulator's thematic work will continue and be used to analyse trends and developments in industry, but may also result in the identification of shortcomings that could be regarded as breaches and subject to enforcement.

That said, and as already highlighted above, the timing and scope of the interventions to deliver the outcomes above will remain actively under review in light of coronavirus, which could lead to a further updated Business Plan over the coming months. Other FCA policy and supervisory work, for example the Single Easy Access Rate (SEAR), Consumer Credit Act Review, Motor Finance Policy Statement and the post-RDR advice suitability review have all been placed on hold.

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